

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

I. INTRODUCTION

Defendants University of Cincinnati Physicians, Inc. dba UC Physicians (“UCP”), University of Cincinnati, and UC Health, LLC (collectively “Defendants”) oppose Plaintiff Jay Johannigman’s Motion for Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction (“TRO”). This opposition is supported by the Affidavit of Timothy Pritts, MD, PhD (“Pritts Affidavit”) filed as Exhibit A, hereto.

Plaintiff is a current employee making the same pay and benefits as he always has. The only thing that has changed since May 2018, is he is currently performing his clinical work at West Chester Hospital, rather than at University of Cincinnati Medical Center (“UCMC”), because he made a threat of physical harm to a resident at UCMC. Plaintiff admitted his bad behavior at the time, and admitted that this was part of a pattern of bad behavior over the course of his 25 years. Plaintiff apparently believes that because he is a trauma surgeon he is beyond reproach. And he is now asking this Court to intercede in the manner in which Defendants manage their doctors in order to maintain a safe work environment for both their employees and patients. Not only is he

asking the Court to intercede, but he is asking the Court to intercede by granting him the extraordinary relief of a temporary or preliminary injunction without a trial on the merits. It is axiomatic that it is not the Court's role to sit as a super personnel department. It is also axiomatic that there is no basis for the extraordinary remedy of an injunction in an employment dispute such as this.

Plaintiff, a current employee, brings the following claims against Defendants related to his employment. 1) sex discrimination under Ohio Revised Code 4112; 2) retaliation under Ohio Revised Code 4112; 3) military status discrimination under Ohio Revised Code 4112; 4) discrimination under the Uniformed Services Employment and Reemployment Act of 1994 ("USERRA"); 5) failure to reemploy under USERRA; and 6) defamation¹. There is no legal basis for any emergency relief.

II. FACTS

A. Plaintiff Has A History Of Aggressive And Poor Behavior Towards Others, Particularly Residents, Culminating In A Physical Threat Of Harm To A Resident In May 2018, Resulting In His Removal From That Facility.

Since 1994, Plaintiff has been employed by Defendant UCP to practice medicine at medical facilities operated by Defendant UC Health. Plaintiff's employment agreement allows Defendant UCP to assign Plaintiff to any Cincinnati area hospital. (See Employment Agreement, attached as Exhibit B at Section 1). Plaintiff's accomplishments have been overshadowed by decades of extremely poor behavior, including his inability to get along with colleagues and medical residents, as well as his propensity for completely inappropriate outbursts. (Pritts Affidavit at ¶ 9).

On May 14, 2018, an anesthesiology medical resident complained to his supervisor that on May 7, 2018, Plaintiff put his finger in the resident's face and loudly threatened to "break his

¹ Plaintiff does not request injunctive relief relative to his defamation claim.

fingers one by one" –. (Pritts Affidavit at ¶ 3). During the interaction, Plaintiff repeatedly threatened the medical resident that he would snap each and every one of his 10 fingers.

An investigation was conducted. During the investigation, Plaintiff was assigned to West Chester Hospital to limit his interaction with medical residents at UCMC. Plaintiff admitted to the “gravity of his actions” and conceded he was removed because of his own actions. He acknowledged that it was “a significant lapse of judgment and conduct.” In fact, in a May 2018 letter to Chair, Department of Surgery Dr. Michael Edwards, Plaintiff acknowledged that, “[y]ou and I have discussed the significant impact of my cognitive bias my behaviors over the last 25 years have created. That being said, I hope you realize and can recognize the significant personal and professional investment I have made in attempting to rebuild and redirect my bad habits.” (See May 30, 2018 Letter, attached as Exhibit C). In a separate email from Plaintiff to Dr. Edwards and Dr. Pritts, Plaintiff acknowledged he has “had a recognized liability with volatility and inappropriate behavior.” (See May 31, 2018 Email, attached as Exhibit D). Further still, he recognized his “career is in a ‘Zero Tolerance Mode.’” (*Id.*).

As a result of Plaintiff’s repeated mistreatment of medical residents, the University of Cincinnati department heads of Emergency Medicine and Anesthesiology made the written request in June 2018 that Plaintiff be permanently excluded from the teaching programs with medical residents. (See June 2018 Letter, attached as Exhibit E). Their letter even sought assurances that Plaintiff would be barred from contact with their medical residents entirely. Given that the May 7, 2018 incident was only the latest in a series of the same or similar misconduct over the years, Defendants chose to prohibit Plaintiff from contact with medical residents. (Pritts Affidavit at ¶s 4 and 8).

At the conclusion of the investigation, Plaintiff was issued a Final Written Warning. (See Final Warning, attached as Exhibit F, Pritts Affidavit at ¶ 9). The Final Warning included a directive not to have any interaction with any medical residents or fellows unless expressly authorized to do so. The Final Warning further explained that Plaintiff would remain assigned to West Chester Hospital.

B. Plaintiff Has A History Of Military Leaves And Was Returned To Work After Each One Without Incident.

Defendants have supported Plaintiff's military career throughout his employment. He has taken multiple leaves for combat and other deployment, all without issue.² When Plaintiff returned from his most recent military leave in January 2018, he immediately resumed his same position, same title, same pay and same duties, including treating trauma care patients. (Pritts Affidavit at ¶ 6). In fact, the May 7, 2018 incident occurred while Plaintiff was treating a trauma care patient. (Pritts Affidavit at ¶ 6)

Plaintiff complains that he was not placed on the January – June, 2018 six month weekly trauma call schedule. This trauma call schedule is distributed twice each year for January through June and July through December, respectively. (Pritts Affidavit at ¶ 7) This trauma call schedule for January through June 2018 was determined in November 2017, while Plaintiff was still on leave. This call schedule is set for a six-month period so that the doctors can plan their other activities around it. Being on trauma “call” was not an everyday part of Plaintiff's position. Plaintiff agreed not to be placed on the schedule during this particular period because an entirely new trauma team care system was implemented while Plaintiff was on leave. (Pritts Affidavit at ¶ 7). This was a significant undertaking and changed the team dynamics and approach to trauma

² Numerous physicians take military leave and return to employment with the full support of Defendants.

care. Before and during the implementation, there was ongoing education, training and discussions regarding implementation. (Pritts Affidavit at ¶ 7) Simulation sessions were also offered. (Pritts Affidavit at ¶ 7) It was essential to get everyone on the same page to ensure the success of the new system and to improve overall patient care. Before placing Plaintiff on the call schedule, it was essential that he get acclimated to the new system.

Plaintiff participated in simulation training in April 2018. (Doc. 4, PageID 55 at ¶ 55). However, before Plaintiff could be placed back on the trauma call schedule, Plaintiff's behavioral issues came to a head as a result of the above-referenced May 7, 2018 incident, and the subsequent letter from the department chairs prohibiting contact with medical residents. And before Plaintiff filed this lawsuit, 10 doctors signed a letter addressed to Dr. Jeff Sussman, Interim Chair, Department of Surgery, requesting Plaintiff be removed from the Section of General Surgery permanently. The request was specifically made "due to issues with the creation of a hostile work place environment as well as stated threats to the Department of Surgery and our section." (See March 4, 2019 Letter, attached as Exhibit G).

III. STANDARD

An "injunction is an *extraordinary* remedy which should be granted only if the movant carries his or her burden of proving that the circumstances clearly demand it." *Overstreet v. Lexington-Fayette Urban County Gov't*, 305 F.3d 566, 573 (6th Cir. 2002) (emphasis added). To be entitled to such an extraordinary remedy, Plaintiff bears the burden of establishing all of the following by clear and convincing evidence: (1) there is a substantial likelihood Plaintiff will prevail on the merits of his claims; (2) he will suffer irreparable injury if the injunction is not granted; (3) no third parties will be harmed if the injunction is granted; and (4) the public interest will be served by the injunction. *City of Pontiac Retired Emps. Ass'n v. Schimmel*, 751 F.3d 427, 430 (6th Cir. 2014). Plaintiff cannot establish any of them.

IV. ANALYSIS

This lawsuit is nothing more than a typical employment dispute. Ordering Defendants to allow Plaintiff to return to UCMC where he threatened a resident without a trial on the merits would run contrary to clearly established United States Supreme Court precedent. *Sampson v. Murray*, 415 U.S. 61, 39 L. Ed. 2d 166, 94 S. Ct. 937 (1974). Indeed, Plaintiff fails to demonstrate that *any* of the factors supporting emergency relief are satisfied in this case and, thus, is not entitled to the extraordinary remedy of a temporary restraining order or preliminary injunction. In particular, Plaintiff cannot demonstrate a substantial likelihood he will succeed on the merits of his claims, and as a result, his request for injunctive relief has no legal basis. Moreover, Plaintiff cannot demonstrate irreparable harm because the alleged unlawful actions about which he now complains occurred over a year before he even filed his lawsuit. Finally, the public has an interest in hospitals effectively providing care to its patients and protecting its residents from harm, and substantial harm to that care will occur if the injunction Plaintiff seeks is issued.

A. Plaintiff Is Not Substantially Likely To Succeed On The Merits Of His Claims.

Plaintiff cannot establish a substantial likelihood that he will succeed on the merits of his claims. His claims are “garden variety” employment claims. Moreover, he continues to be employed and work in the same role with the same pay. Not only can he not establish that he suffered an adverse employment action³, but he cannot establish that the legitimate reason for his reassignment to West Chester Hospital – his physical threat of harm to a resident – was pretextual. Whether his claim is sex discrimination (where he claims he was treated differently than other men) (Count 1), retaliation (Count 2) or discrimination based on military status (Counts 3 and 4),

³ To constitute an adverse employment action, there must be a materially adverse change in the conditions of employment. *Kocis v. Multi-Care Mgmt.*, 97 F.3d 876, 887 (6th Cir. 1996)(reassignment of nurse was not an adverse action where the nurse suffered no loss of pay, benefits, or job status).

his claims fail because, among other things, he cannot establish an adverse employment action and he cannot establish pretext. It is undisputed he threatened a resident. He conceded the “recognized liability” from his admitted “volatility and inappropriate behavior” in his own letter to Dr. Edwards. (Exhibit D). Plaintiff’s own apparent belief that in today’s world where workplace bullying and violence has reached epic proportions, an employer should not take the exact action that Defendants took here to protect its employees and its patients does not overcome the legitimate business interests of the Defendants and the obligations that they owe to their employees, residents and patients.

There is no substantial likelihood of success on the merits under these circumstances. And it is not the role of the Court to sit as a super personnel department and substitute its judgment for that of the managers involved, particularly when there are also patient safety concerns involved. *Saulsberry v. Fed. Express Corp.*, 552 Fed. Appx. 424, 430 (6th Cir. 2014)(“the court cannot sit as a super-personnel department . . . it is inappropriate for the judiciary to substitute its judgment for that of management”)(internal citation omitted).

Plaintiff also cannot establish a substantial likelihood of success on his USERRA claim. Under USERRA, an employer simply has to reemploy the employee to a position he would have been employed “if the continuous employment of such person with the employer had not been interrupted by such service, or a position of like seniority, status and pay.” 38 U.S.C. § 4313(a)(2)(A).

Here, Defendants immediately reemployed Plaintiff upon his return from military service. Defendants returned Plaintiff to the same position and compensation. (Prittis Affidavit at ¶ 6). The only change to his employment upon return from military service was he was not on the six-month weekly trauma call schedule which was set and to which he agreed while he was on leave. Because

this change did not affect his seniority, status or pay, Defendants plainly satisfied all of their obligations under Sections 4312 and 4313. *See Woodard v. N.Y. Health Hosps. Corp.*, 554 F.Supp.2d 329, 356 (E.D.N.Y. 2008)(summary judgment granted to employer where employee was returned to a different department and different job because the employee suffered no loss of pay, seniority, or responsibility); *Long v. Ellis Envil. Group*, 2007 U.S. Dist. LEXIS 23784, *21-26 (N.D. Fla. 2007)(summary judgment for employer where it returned person to completely different job because the different job had the same pay, benefits, and status). Plaintiff's claim therefore fails.

To the extent Plaintiff attempts to argue his subsequent assignment to West Chester Hospital in May 2018 because of his threats to a resident months after his return from military service violated 38 U.S.C. § 4312, Plaintiff's claim similarly must fail. “[Section] 4312 only entitles a person to immediate reemployment.” *Id.* In fact, Section 4312 “does not prevent the employer from terminating him the next day or even later the same day.” *In re Petty*, 538 F.3d 431, 445 (6th Cir. 2008) (quoting *Francis v. Booz, Allen & Hamilton, Inc.*, 452 F.3d 299, 304 (4th Cir. 2006)). Accordingly, Plaintiff is not substantially likely to succeed on the merits of his USERRA claims under Sections 4312 and 4313. ⁴

B. Plaintiff Will Not Suffer Irreparable Harm If His Request For Relief Is Not Granted.

Even if Plaintiff could establish a substantial likelihood of success, which he cannot, the extraordinary remedy sought at this early stage is not appropriate because there is no irreparable harm. Plaintiff was removed from trauma call in November 2017 (over 17 months ago) when the new trauma care team system was put in place and has been restricted from working at UCMC

⁴ In addition to the arguments previously made in Section IV.A, Defendant UC has sovereign immunity as to all of the claims in Plaintiff's Amended Complaint. Therefore, Plaintiff cannot succeed on the merits against Defendant UC and a Motion to Dismiss is forthcoming.

since May 2018 (over a year ago). As this Court has held, Plaintiff's delay in asserting his rights, "severely undermines" his request for emergency injunctive relief. *Total Quality Logistics, LLC*, No. 1:17cv352, 2017 U.S. Dist. LEXIS 197990, at *4. Accordingly, Plaintiff cannot establish he would suffer irreparable harm in the absence of an injunction. Plaintiff has been in the same position for over a year, apparently without the need for emergency relief.

Moreover, the United States Supreme Court has made it clear that in the typical employment case, the availability of damages prevents a plaintiff from claiming irreparable harm. *See Sampson v. Murray*, 415 U.S. 61, 39 L. Ed. 2d 166, 94 S. Ct. 937 (1974).

Plaintiff's *only* basis alleged in the Amended Complaint that he will suffer irreparable harm if emergency relief is not granted is that his reputation is "sullied" and his skills have deteriorated. (Doc. 2, PageID 43). Neither, however, constitutes irreparable harm. Indeed, Plaintiff's Amended Complaint alleges harm that is common to garden variety employment dispute.

The United States Supreme Court has set an extraordinarily high standard for obtaining emergency relief in employment cases – a standard Plaintiff falls far short of meeting. *Sampson v. Murray*, 415 U.S. 61, 39 L. Ed. 2d 166, 94 S. Ct. 937 (1974). To be sure, reinstatement pending a trial on the merits, is an extraordinary remedy. *See e.g., Roth v. Lutheran Gen. Hosp.*, 57 F.3d 1446, 1460 (7th Cir. 1995) (doctor's alleged deterioration in knowledge and skills, psychological distress and loss of professional association were not reparable harm).

To succeed, "the type of irreparable injury must really depart from the harms common to most discharged employees." *Lieberman v. Husted*, 900 F. Supp. 2d 767, 781 (S.D. Ohio 2012) (quoting *Bedrossian v. Nw. Mem'l Hosp.*, 409 F.3d 840, 845 (7th Cir. 2005)) (internal citation omitted). The law is clear that in an employment discrimination case, alleged humiliation and damage to reputation specifically do not constitute the irreparable harm necessary to warrant

emergency injunctive relief. *Id.* Deterioration of a physician's skills likewise does not constitute irreparable harm. *Bedrossian*, 409 F.3d at 846. Significantly, "physicians are awarded no special treatment under *Sampson...*" *Id.*; *Dos Santos v. Columbus-Cuneo-Cabrini Med. Ctr.*, 684 F.2d 1346, 1349 (7th Cir. 1982) (finding stigmatization in the medical community, questioning of her professional competence, diminished future employment, and deprivation of valuable experience did not constitute irreparable harm under *Sampson*).

Here, the harm Plaintiff alleges he has suffered plainly does not warrant the extraordinary remedy of emergency injunctive relief. The injuries Plaintiff alleges are typical injuries involved in any employment case. *Bedrossian*, 409 F.3d at 846. Importantly, Plaintiff's irreparable harm argument is even less persuasive than the arguments set forth in *Sampson* and like cases, because he has not been discharged at all. There is no basis whatsoever for emergency injunctive relief here.

C. Third Parties Will Be Harmed If The Court Orders Plaintiff To Be Reassigned To The Location Where He Threatened A Resident.

Plaintiff threatened physical harm to a resident. Yet he asks this Court to summarily override Defendants' actions to protect its residents, without a full trial, and override the patient care decisions of the Defendants and the many other medical professionals they employ.

Any such order would substantially interfere with Defendants' ability to effectively provide care to patients at UCMC. (Pritts Affidavit at ¶ 11) In addition to ordinary concerns for workplace violence and bullying, healthcare employers face the added concern for patient care and safety. It is essential that residents, nurses and others who may be "below" a surgeon are comfortable speaking out to raise patient safety concerns or to warn if they see a mistake about to be made. Abusive or bullying behavior by physicians dissuades that necessary and critical dynamic and poses a risk of harm to patients. Despite Plaintiff's self-serving assertions to the contrary, by his

own admission he has proven time and time again he cannot be trusted to behave appropriately. (See *e.g.*, Exhibit D where Plaintiff admits, in part, “I have had a recognized liability with volatility and inappropriate behavior.” The academic department chairs at the University of Cincinnati have expressly sought assurances Plaintiff not be permitted to have contact with their medical residents. (Exhibit E). The Section of General Surgery has similarly requested Plaintiff’s removal from their group. (Exhibit G). The emergency relief that Plaintiff seeks would harm the residents, other doctors and patients. This factor, therefore, weighs in favor of Defendants, particularly considering Plaintiff’s failure to establish both substantial likelihood of success on the merits and irreparable harm.

D. The Public Interest Will Not Be Served By Reassigning Plaintiff To Work In The Location Where He Threatened A Resident.

Forcing other doctors and residents who are unable to effectively work with and who even fear Plaintiff does not serve the public interest, particularly in a high pressure and high stakes environment like a trauma center. Aside from claiming that he is an experienced trauma surgeon, Plaintiff has completely failed to establish by clear and convincing evidence how the public will be served. The public has an interest in preventing workplace bullying and violence. Plaintiff’s vague argument is unavailing and serves as another basis upon which denial of Plaintiff’s Motion should be based.

V. CONCLUSION

Plaintiff cannot establish he is entitled to the extraordinary remedy of emergency injunctive relief, because he cannot meet his burden of proof by clear and convincing evidence under Fed. R. Civ. P. 65. In fact, all four factors weigh in favor of Defendants. Accordingly, Defendants respectfully request the Court deny Plaintiff’s motion.

Respectfully submitted,

/s/ Michael S. Glassman

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*Attorneys for Defendant, University of
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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of May 2019, I electronically filed the foregoing Memorandum in Opposition to Plaintiff's Motion for Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all parties of record.

/s/Michael S. Glassman _____

Michael Glassman

*Attorney for Defendant University of
Cincinnati Physicians, Inc.*

USGC AGREEMENT

This Agreement is made as of the 1st day of December 1995, by and between **UNIVERSITY SURGICAL GROUP OF CINCINNATI, INC.** (hereinafter "USGC") and **JAY A. JOHANNIGMAN, M.D.** (hereinafter "Physician").

1. EMPLOYMENT. USGC hereby employs Physician and Physician hereby accepts employment to perform medical services as directed by USGC and undertaken by USGC for individual patients and otherwise at the University Hospital of the University of Cincinnati or such other Cincinnati area hospital as may be directed by USGC. Physician agrees not to engage in the practice of medicine (including private office practice) other than through USGC except as approved in writing by USGC through its President. Physician shall also assist in administration and other duties as directed by USGC. All billings for services rendered by Physician shall be done by USGC which shall be the sole owner of the receivables and proceeds thereof.

2. TERM. The term of this Agreement shall begin **December 1, 1995**, and shall end **June 30, 1996**, but shall continue thereafter until terminated by either party by written notice to the other at least sixty (60) days prior to the effective date of termination. This Agreement may also be terminated immediately by USGC for cause at any time. For purposes of this Agreement, "cause" shall be defined as conviction of a felony, an act of dishonesty, abuse of alcohol or drugs which affects job performance, the failure to follow the reasonable directions of USGC's Board of Directors, or a material breach of this Agreement. Physician may terminate this Agreement immediately upon material breach by USGC.

3. COMPENSATION. Physician's compensation (UC salary and benefits plus USGC salary and benefits) will be in accordance with the Surgery Practice Plan adopted by the Surgery Executive Committee as amended from time to time and incorporated by reference in this Agreement.

A corporate monthly salary of \$11,250.00 will be made and paid on the last working day of the month.

4. DISABILITY. If Physician should become ill or otherwise disabled so as to be unable to perform his services hereunder, compensation will terminate after an aggregate of ninety (90) days of disability in any year and until the Physician is fully capable

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of and does resume his normal duties hereunder. Compensation during this ninety (90) days shall be reduced by any Social Security, Workers' Compensation, or corporate paid disability benefit payments received by Physician.

5. **FRINGE BENEFITS.** Physician will be entitled to all fringe benefits offered by USGC from time to time to its Physician employees. Included currently (for information only) are the following:

- (a) \$500,000 Universal life insurance policy with an established life insurance company provided on a customary corporate split-dollar arrangement (wherein the total premiums paid by USGC are repaid to USGC out of the proceeds of the policy or by the Physician).
- (b) Self insurance coverage or malpractice insurance from an insurance carrier.
- (c) Disability benefits provided through a disability insurance plan as may be established from time to time by USGC.
- (d) Such qualified pension benefits as may be established from time to time by USGC.
- (e) Severance Pay equal to the amount of total premiums paid by USGC in connection with the corporate split-dollar program set forth in (a) above, less the Cumulative Physician's Deficit, if any, existing at termination of this Agreement.

All of such benefits shall be furnished to Physician in accordance with the particular plan for each benefit in effect from time to time and, where there is insurance, the benefits shall be available as of the date the insurance is obtained by USGC for Physician subject to the requirement that Physician cooperate and execute such documents and take such examinations as may be required. If the insurance is available for Physician but not at standard rates for any reason, then the benefits may be in a reduced amount or Physician may pay the difference in premium cost to obtain for Physician the benefits in the amounts set forth above.

6. **EXPENSES.** USGC will reimburse Physician for his or her approved business expenses. Approved business expenses shall be such of the following and others as may be approved by USGC: memberships, subscriptions and publications, answering and paging services, travel/meeting expenses, out-patient office expenses, and advertising.

7. **NOTICES.** Any notice or approval required or permitted to be given under this Agreement shall be in writing and shall be deemed given when deposited in the United States mail, certified or registered mail, postage prepaid, and addressed as follows:

TO USGC: UNIVERSITY SURGICAL GROUP
OF CINCINNATI, INC.
231 Bethesda Avenue, M.L. #558
Cincinnati, OH 45267-0558

TO PHYSICIAN: JAY A. JOHANNIGMAN, M.D.
2552 Observatory Avenue
Cincinnati, OH 45208

or to such other address as either of the parties hereto may from time to time advise the other party in writing.

8. **USE AND DISCLOSURE OF CONFIDENTIAL INFORMATION.** Except as may be mutually agreed by USGC and the Physician in writing, the Physician shall not during this Agreement, disclose, for any purpose, any confidential information which has been obtained by or disclosed to Physician as a result of his employment by USGC. Physician and USGC agree that patient files are the property of USGC, and in the event of the termination of this Agreement by either party, USGC shall notify patients treated by Physician of his departure and his new address, and such patients' files shall be disposed of by USGC in accordance with directions of the patients. In the absence of written direction from the patient, such patients' files shall remain with USGC. Research data and personal files of Physician are property of Physician. In the event that Physician publishes the results of his research, he shall give due credit to other persons who have actively participated in such research and shall comply with the publication guidelines, rules and regulations of the University of Cincinnati.

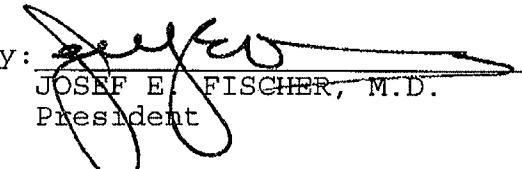
9. TERMINATION. Upon termination of this Agreement by either party for any reason, any collections received will be used first to satisfy any cumulative deficit associated with the guaranteed salary. After any deficit is satisfied, Physician will receive fifty percent (50%) of all collections of USGC resulting from Physician's direct services which are received by USGC within twenty-four (24) months of the date of termination. However, if Physician either directly or indirectly practices medicine at an office or hospital located within a radius of thirty (30) miles of the UC Medical Center at any time within the one (1) year period after the date of termination, then the Physician shall not be entitled to receive the amounts set forth in the preceding sentence, and any such amounts previously paid by USGC to Physician shall be immediately repaid by Physician upon notice and demand by USGC.

10. COVENANTS NOT TO SOLICIT. During the term of this Agreement and for a period of two (2) years following termination of this Agreement for any reason, Physician shall not directly or indirectly solicit, induce, or encourage any other person who at any time during the six (6) months prior to such termination was employed by University Surgical Associates of Cincinnati, Inc. ("USAC") or by USGC to leave his or her employment.

11. REMEDIES OF USGC. In the event of a breach or threatened breach of paragraphs 8 or 10 of this Agreement, USGC shall be entitled to seek injunctive relief, in addition to damages, for the breach thereof, and, in addition to which, USGC shall be entitled to reasonable attorney fees incurred in the enforcement of said provisions. In addition, in the event of breach or threatened breach of paragraphs 8 or 10 hereof, Physician shall forfeit any amounts owing to him hereunder. The remedies herein provided shall be cumulative and no one shall be construed as exclusive of any other or of any remedy provided by law and failure of USGC to exercise any remedy at any time shall not operate as a waiver of the right of USGC to exercise any similar or different remedy for the same or subsequent default at any time thereafter.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

UNIVERSITY SURGICAL GROUP
OF CINCINNATI, INC.

By: 
JOSEF E. FISCHER, M.D.
President


JAY A. JOHANNIGMAN, M.D.
Physician

Contract Amendment to Schedule A

This Amendment is made as of the 1st day of July 1, 1998 by and between USGC and, Jay Johannigman, M.D.

Jay Johannigman, M.D.

Schedule A

Your monthly Corporate Check Will be
Pursuant to Your Guarantee: \$ 13,333.33

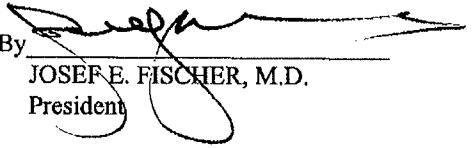
The Practice Plan does not include any income from the University of Cincinnati.

The term of this Agreement shall begin July 1, 1998, and shall end June 30, 1999, but shall continue thereafter until terminated by either party by written notice to the other at least sixty (60) days prior to the effective date of termination.

In consideration for a new contract with a fixed guaranteed salary, we hereby amend the contract to include on termination of this Agreement by either party for any reason, all physicians collections resulting from Physician's direct services which are received by USGC will remain the property of USGC.

In all other respects, the Agreement is confirmed.

UNIVERSITY SURGICAL GROUP
OF CINCINNATI, INC.

By 
JOSEPH E. FISCHER, M.D.
President

 10/20/98
JAY JOHANNIGMAN, M.D.
Physician

Contract Amendment to Schedule A

This Amendment is made as of the 1st day of, December, 1999 by and between USGC and, **Jay A. Johannigman, M.D.**

Jay A. Johannigman, M.D.

Schedule A

Your monthly Corporate Check will be
Pursuant to Your Guarantee: **\$13,958.33**

The Practice Plan does not include any income from the University of Cincinnati.

The term of this Agreement shall begin , December 1,1999, and shall end June 30, 2001, but shall continue thereafter until terminated by either party by written notice to the other at least sixty (60) days prior to the effective date of termination.

In all other respects, the Agreement is confirmed.

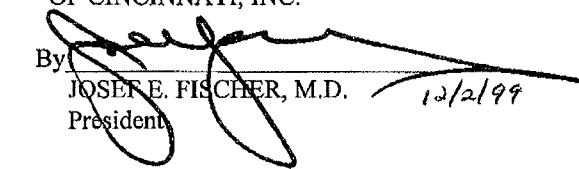
UNIVERSITY SURGICAL GROUP
OF CINCINNATI, INC.

By

JOSEPH E. FISCHER, M.D.

President

12/2/99


JAY A. JOHANNIGMAN, M.D.

Physician

Dr. Edwards,

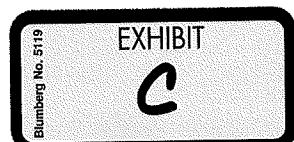
A summary of my comments to you

- 1.) In light of the recent report from an anesthesia resident. I apologize for the adverse impact is has imparted on the Department. I did not threaten physical harm to the resident. I may have been guilty of hyperbole for effect—but I did not raise my voice or point fingers or put fingers in anyone's face. If an apology is necessary one will be forwarded. I believe that due diligence will demonstrate that my only error was misunderstood hyperbole and a generation gap in methods of teaching.
- 2.) I am wholly vested and committed to the Department of Surgery that you lead and to the city that I grew up in and the programs I have been privileged to have played a role in shaping
- 3.) I am, by my nature, a personality type referred to as the Loyalist. More than most I understand the chain of command and respect for the chain of command. That being said, I must also acknowledge that my actions and comments of late would readily lead most observers to think otherwise. I apologize to you and acknowledge this as a significant lapse of judgement and conduct.
- 4.) I would like to return, or attempt to rebuild, our relationship to where it was in earlier years. Not that you needed it, but I was one of your most ardent supporters during the interview process. I pulled e-mails when I was in Iraq in 2008 as you were house hunting. I remember returning in 2012 and establishing WCH as our combined goal. You provided the top cover and I would get the job done.
 - a. I pledge to you my unequivocal support to you within the halls of the hospital, the COM and throughout the community
- 5.) The suspension of first my trauma privileges and now my clinical privileges has impacted me to the very core. It has caused a level of personal and emotional distress that is significant and severe. I haven't slept for months and am in even more intensive therapy for depression.
- 6.) Yet I understand (perhaps) the genesis of this status and wish to assure you that if the intent was to create a comprehensive and exhausting self-examination – this has been done. That, along with turning 60 and looking to the final chapters of my career—this is not something I wish to squander.
- 7.) Another key component that you pointed out to me is my need to be a part of a team and feel like I am contributing. I am ashamed that I am letting my partners down and not doing my part. This is an indescribably horrible feeling for me

Therefore I would like to rebuild our relationship. I would ask that you take an active role in mentoring me at this stage. I would like to begin a series of monthly meeting with you to discuss my progress and the process of re-engineering my personality.

You and I have discussed the significant impact of cognitive bias my behaviors over that last 25 years have created. That being said, I hope you also realize and can recognize the significant personal and professional investment I have made in attempting to rebuild and redirect my bad habits. These include leadership coaching, professional psychiatric counseling and medication therapy.

There is only so much that me changing me can achieve. Some folks at this medical center will continue to hold onto significant cognitive bias (they will only remember the bad personality and habits I have



displayed). You have been witness to direct admissions from other senior leaders in other departments that I have been actively “targeted” by senior faculty members.

You are the one person in this medical center of significant stature to be my advocate and hopefully encourage people to give me a chance at this very late juncture in my career.

I am comfortable with you sharing that during my time off clinical services you have shaped and directed a program of personality rehabilitation as well as directed the personal and professional growth plan as outlined above.

Would you consider discussing a plan with the Chair of Emergency Medicine to participate in a regular review of my performance, conduct and professionalism? I recognize that my career rests on this but in the short term I will also put my Variable compensation and baseline compensation at risk for failure to perform.

- I am willing to be recorded
- I am willing to wear a body cam
- I am willing to be evaluated by EM residents and faculty for all interactions in the ED

I am hoping that you will provide me your support in becoming a better physician and in becoming whole again. I awake each day like a Zombie with my heart and soul missing and not wanting to get out of bed. I can no longer step foot in the hospital that I devoted the last twenty five year of my life (at the cost of my marriage and my family)

If I am allowed to begin this journey back to some degree of normalcy- to be released from this horrible isolation which is compounded by the events of my personal life—I would hope to return to the goal of focusing on the IMM

I would like clarification of the Schott endowed Professorship that was meant to be in my name

As a result of my recent recognition as Hometown Hero I have been fortunate to have follow on tours and visits with the highest level of Cincinnati community leadership. I think it may be possible, with their help and mentoring, to raise seven to ten million dollars over the next four to five years.

- This is my only wish- to remain in my hometown with my patients and friends
- This is my exit strategy
- This is my dream
- This is my pledge to you
- I understand that there is no room for error and I will be under a Zero Tolerance program

Jay Johannigman

May 30, 2018

From: Edwards, Michael (edwardm6)
Sent: Thursday, May 31, 2018 12:34 PM
To: Johannigman, Jay (johannja)
Cc: Pritts, Timothy (prittsta); UCH-Lofgren, Rick (Rick.Lofgren); Filak, Andrew (filakat); Ball, William (ballws); Bunger, Amy (bungeray); McCormick, Sheila (mccormsl); Sussman, Jeffrey (sussmaj); Friedrich, Andrew (friedrad)
Subject: Re:

Dr Johannigman,

Thank you for this response.

I have supplied this to Ms McCormick for the purpose of UCP HR due diligence.

I will have Dr Sussman, our Vice Chair for Education, supervise the departmental input and process for departmental due diligence and make recommendations to Dr Pritts and myself as to the resolution of this concern.

I have spoken to Dr Filak and Dr Lofgren. After my conversation with you yesterday, and with Dr Pritts, he and I have both concluded that it is appropriate for you to resume your clinical duties at WCMC effective immediately. Please do not participate in the clinical activities of UCMC until this issue is addressed and finalized.

I remind you that words and actions which provoke these concerns are not consistent with the culture we seek to cultivate in the department of surgery and ask you to do a better job in the future. I am pleased by your stated commitment and affirmation below.

Michael Edwards MD, Chair

From: "Johannigman, Jay (johannja)" <JOHANNJA@UCMAIL.UC.EDU>

Date: Thursday, May 31, 2018 at 11:28 AM

To: "Edwards, Michael (edwardm6)" <edwardm6@ucmail.uc.edu>

Cc: Timothy Pritts <PRITTSTA@UCMAIL.UC.EDU>

Subject: <no subject>

Dr. Edwards

I am writing you today in response to a complaint from an anesthesia resident that I threatened to "rip his fingers off" and that I put a finger in his face.

The events to my recollection are as follows.

I was in the SICU as the attending and had been called to the Operating room by Dr. Vanessa Nomellini to assist with a gunshot wound to the right lobe of the liver (through and through open fracture of segments six and seven). In addition the patient had sustained other gunshot wounds to his back and flank. The patient had sustained a four to five liter blood loss during the case.

I had noted in the Operating room that the patient had a substantial blood loss and was still undergoing active resuscitation with blood component therapy and volume replacement. After assisting Dr. Nomellini I returned to the ICU and met with the assembled ICU team to give them report since the patient would be coming to our side of the SICU. We continued to complete afternoon check-out rounds while awaiting the arrival of the patient from the Operating room.

Approximately thirty minutes later we noted the patient coming to the ICU so the team and I went to the room to accept the patient and get report. I honestly do not know the resident nor do I recall ever working with him in the past. I do

remember the resident saying he was going to start a central line and a levophed infusion to manage the ongoing hypotension that the patient was demonstrating.

Although I do not recall the precise words I am certain that my attempt at hyperbole in response to this comment was "that would be unfortunate because I would have to rap your knuckles or threaten to break your fingers-or anyone's fingers for that matter- like Sister Rose used to do to me when I misbehaved- because starting vasopressors on a volume depleted patient in hemorrhagic shock results in increased mortality. Let's go get the patient into the bed and see if we can sort this out." The ICU team, anesthesia team and I then went into the room and proceeded to hook the patient up to monitors, we established that the first blood pressure was approximately 86/56—with a mean of 66 mm. Hg. The SICU fellow, medical student and I were present for this conversation (Dr. Ian Jeffries and Ms. Kim Hey MSIV). To my recollection we spent the next ten minutes or so discussing various ways of establishing appropriate preload prior to consideration of any other agents. This discussion included the use of bedside ultrasound, Pulse volume variability and physical exam of the neck. It was about this time that I believe the anesthesia team had assembled its gear and returned to the Operating room. The resident would have left at this juncture while the ICU team and trauma team continued to stabilize the patient.

I understand that it is unequivocally unacceptable to threaten or put a "finger in the face" of any team member. I have gone back to those members of the SICU team that I can remember who may have been present and asked them if this is their recollection and they state that it was not.

I have had a recognized liability with volatility and inappropriate behavior. To my recollection this was not one of those instances. I realize that my career is in a "Zero Tolerance Mode". I can assure you that I continue to strive for emotional awareness and self-vigilance in all matters of this nature. As you are aware I continue in active counseling and therapy to correct these liabilities. I am not perfect and idioms of teaching such as the use of hyperbole die hard after twenty five years of practice. I may be responsible for inappropriate use of hyperbole to make a point—but I never have, nor ever will- physically harm another person.

I apologize to you and all members of the UC Health Care team and UCP for the negative light this has cast

I am available at your convenience to amplify or further discuss

Sincerely

Jay A Johannigman MD



Arthur M. Pancioli, MD
Richard C Levy Professor of Emergency Medicine
and Chairman

Department of Emergency Medicine
College of Medicine

University of Cincinnati Academic Health Center
231 Albert Sabin Way, Suite 1500
PO Box 670769
Cincinnati OH 45267-0769

Phone (513) 558-8086
Fax (513) 558-4599

June 21, 2018

Michael J. Edwards, MD
Professor and Chairman
Department of Surgery
231 Albert Sabin Way, MSB 1459
Cincinnati OH 45267-0769

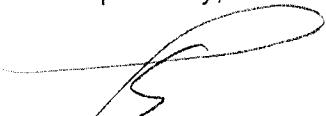
Dear Dr. Edwards:

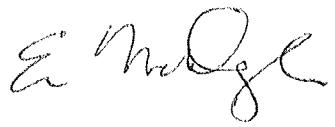
As you are aware, our institution has tolerated years of repeated episodes of unprofessional, intimidating, and bullying behavior from Dr. Jay Johannigman. This behavior creates a hostile work environment that has all too often been inflicted upon the resident trainees in our departments. Despite repeated promises that this behavior would stop, clearly it has not. Recently a trainee in the Department of Anesthesia reported an event which as described can only be considered abusive.

While you have described a "zero tolerance policy" this behavior persists. Therefore, based on our duty to provide a learning environment free from such behaviors, as we explained to you in our meeting on June 21, 2018, we now explicitly prohibit Dr. Jay Johannigman from interacting with any of our residents in any clinical arena. To allow any further exposure of our residents to Dr. Jay Johannigman would be to provide tacit approval of his behavior. We are unwilling to do so.

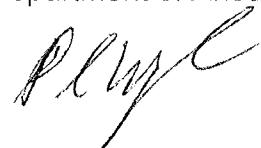
It is our expectation that, as his Chairman, you remove the possibility of him serving in any role which will expose our residents to his behavior.

Respectfully,


Arthur M. Pancioli, MD
Professor and Chairman
Department of Emergency Medicine


Erin E. McDonough, MD
Associate Professor and
Program Director, Emergency Medicine
Residency Training Program


Andrew D. Friedrich, MD
Professor and Chairman
Department of Anesthesiology


Paul J. Wojciechowski, MD
Associate Professor and
Program Director, Anesthesia
Residency Training Program

cc: William S. Ball, MD, UC Sr VP-Health Affairs, and
Dean, UC College of Medicine
Richard P. Lofgren, MD, UC Health Presidency and CEO
Andrew T. Filak, MD, UC College of Medicine Sr. Associate Dean and
Chair, Department of Medical Education



November 27, 2018

Office of the Senior Vice President for Health Affairs
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University of Cincinnati Academic Health Center
PO Box 670555
Cincinnati, OH 45267-0555

3230 Eden Avenue
Phone (513) 558-7333
Fax (513) 558-3512

Jay Johannigman, MD
Professor
Department of Surgery
ML 0558

RE: Final Warning

Dear Dr. Johannigman:

As you are aware, in May 2018, an anesthesiology resident complained about your threatening conduct toward him with respect to an interaction you had with him on May 7, 2018. The resident claimed that you put your finger in his face and loudly threatened him that "If any person touches my patient in hemorrhagic shock, I will break your fingers, I will snap each and every one of your 10 fingers." The resident further advised that he was extremely upset and shaken as a result of your behavior toward him. The above matter was thoroughly investigated, including having the individuals who conducted the investigation meet with you on at least two separate occasions to provide you with an opportunity to provide your description of the events of May 7, 2018. At the conclusion of the investigation, it was determined that you had engaged in misconduct toward the anesthesiology resident. UCP physicians work in a teaching institution. Consequently, conducting yourself in a professional manner at all times and in a non-abusive fashion towards residents, not only is what is expected as to how we treat others, but also is a vital component of the education of our residents and fellows. Demonstrating professional behavior, along with imparting medical and technical knowledge to them, is important to their development as physicians.

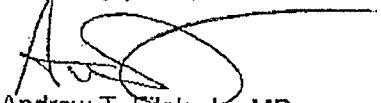
As you are also aware, the May 7th incident was not the first occasion when you engaged in the same or similar kind of misconduct toward other personnel. In fact, there have been a number of prior occasions over the years when you engaged in the same or similar kind of behavior toward co-workers and have been warned that such conduct is unacceptable. Consequently, after the latest incident, you were required to submit to a fitness for duty evaluation before deciding what, if any, disciplinary action to impose because of your latest misconduct toward the resident. The fitness for duty evaluation has been completed and a copy provided to you upon your request. As you are aware, the report concluded that you have the ability to comport your behavior to acceptable professional standards.

Jay Johannigman, MD
November 27, 2018
Page 2

Given that the May 7th misconduct was only the latest in a series of the same or similar kind of misconduct over the years, we have decided to provide you with one final chance to demonstrate that you will conduct yourself appropriately towards others. Accordingly, in lieu of termination of employment, you are warned that if you engage in any future incidents of aggressive, intimidating, threatening, or volatile comments or behavior toward any other person at or relating to the workplace, or in any other misconduct, your employment will be terminated. In other words, there is "zero tolerance" for any recurrence of any misconduct. In addition, until further notice, you are not to have any interaction with any residents or fellows in the performance of your duties, unless you are directed and expressly authorized to do so.

We do value your technical medical skills and service, but no longer will tolerate the kind of inappropriate behavior in which you engaged on May 7th and on other previous occasions. We hope and expect you to take the opportunity to discontinue all inappropriate behavior and to demonstrate professional behavior at all times so to remain employed by UCP. For your information, your current assignment to the West Chester Hospital will continue until further notice as determined by UCP.

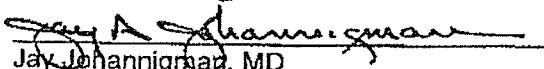
Very truly yours,



Andrew T. Filak, Jr., MD
Interim Senior Vice President for Health Affairs
and Dean, College of Medicine
President and Chairman, UC Physicians

I do not agree with the above

Received:



Jay A Johannigman
Jay Johannigman, MD

Date:

12-5-2018



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Section of General Surgery

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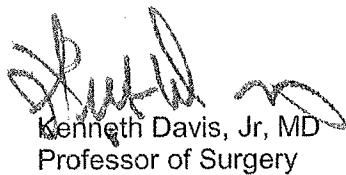
March 4, 2019

Jeff Sussman, MD, PhD
Professor of Surgery
Interim Chair, Department of Surgery
University of Cincinnati Department of Surgery

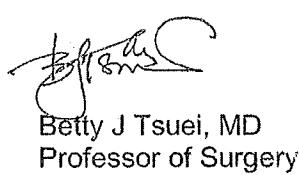
Dear Dr. Sussman,

We, the undersigned are writing to request that Dr. Jay Johannigman be separated from our group. We no longer wish to practice with him as a partner, be associated with him clinically, or provide coverage for patients in his absence. This request is due to issues with the creation of a hostile work place environment as well as stated threats to the Department of Surgery and our section. We request that he be removed from the Section of General Surgery.

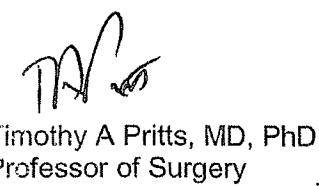
Thank you for your consideration.



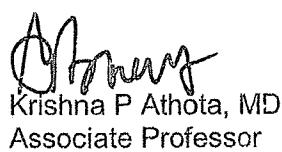
Kenneth Davis, Jr, MD
Professor of Surgery



Betty J Tsuel, MD
Professor of Surgery



Timothy A Pritts, MD, PhD
Professor of Surgery



Krishna P Athota, MD
Associate Professor



Jason J Schrager
Associate Professor



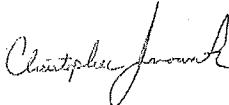
Amy T Makley, MD
Associate Professor



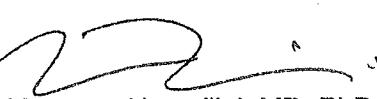
Michael D. Goodman, MD
Associate Professor



D Millar, MD
Assistant Professor



Christopher Janowak, MD
Assistant Professor



Vanessa Nomellini, MD, PhD
Assistant Professor

